

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HUDSON YARDS CONSTRUCTION LLC, : Civil Action No.
Plaintiff, : 18-cv-2376 (GHW)(DF)
: :
-against- : DECLARATION IN
BUILDING AND CONSTRUCTION TRADES : OPPOSITION TO
COUNCIL OF GREATER NEW YORK AND : PLAINTIFF'S MOTION
VICINITY and GARY LaBARBERA, : TO REMAND
: :
Defendants. : :
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CAROL O'ROURKE PENNINGTON, declares under penalty of perjury and pursuant to 28 U.S.C. §1746, that the following is true and correct:

1. I am a member of the firm Colleran, O'Hara & Mills, L.L.P., and General Counsel to the Defendants, Building and Construction Trades Council of Greater New York and Vicinity and Gary LaBarbera ("BCTC" or "LaBarbera"), and have appeared on their behalf in the above referenced action.

2. I am fully familiar with the facts and circumstances of this matter. I submit this Declaration in Support of BCTC's Opposition to Plaintiff's, Hudson Yards Construction LLC, Motion to Remand.

3. I submit this declaration for the purpose of presenting a true and correct copy of the Constitution and Bylaws of the BCTC to this Court, which is annexed hereto as Exhibit "A". At the pre-motion conference conducted in this case on March 30, 2018, the Court made inquiry regarding the structure and operation of the BCTC, the Constitution and Bylaws are submitted in response to those inquires and in further support of the BCTC's opposition to the Motion to Remand.

4. During the pre-motion conference in this case, it was submitted that the BCTC's position with respect to its labor organization status has changed since 2015. In 2015, a charge was filed with Region 2 of the NLRB alleging that the BCTC, as a labor organization, and an employer violated §§ 8(b)(4)(A) and 8(e) of the NLRA. The Region ultimately made an administrative determination that the BCTC and employer inappropriately included moving work within the scope of the PLA because the NLRB did not consider the moving work within the scope of construction industry proviso to § 8(e) 29 U.S.C. § 158(e). The parties voluntarily settled the matter. The Regions' administrative determination is not published or currently available through a Freedom of Information Act (FOIA) request. Since § 8(b)(4)(a) only applies to labor organizations and their agents, and 8(e) only applies to labor organizations and employers as defined in the Act, it necessarily follows that the Region determined the BCTC was subject to those sections of the Act, 29 U.S.C. §§ 158(b)(4)(a) and 158(e).

5. As a result of the Region 2, NLRB case, along with the decision in the Eastern District of New York, in Business Asset Relocation, Inc. v. Teamsters Local 814, 2015 U.S. Dist. LEXIS 39524 (E.D.N.Y. 2015), which rejected the BCTC's motion to dismiss on the basis of its status, the BCTC has reevaluated its legal position with respect to its status as a labor organization within the meaning of the NLRA and submits that the BCTC satisfied all the indicia of a labor organization within the meaning of the Act.

WHEREFORE, the BCTC demands an order and judgment denying Plaintiff's Motion to Remand together with such other and further relief as to the Court may appear just, proper and equitable.

Dated: May 21, 2018
Woodbury, New York

Respectfully Submitted,

/s/ Carol O'Rourke Pennington

By: CAROL O'ROURKE PENNINGTON (COP-0594)
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